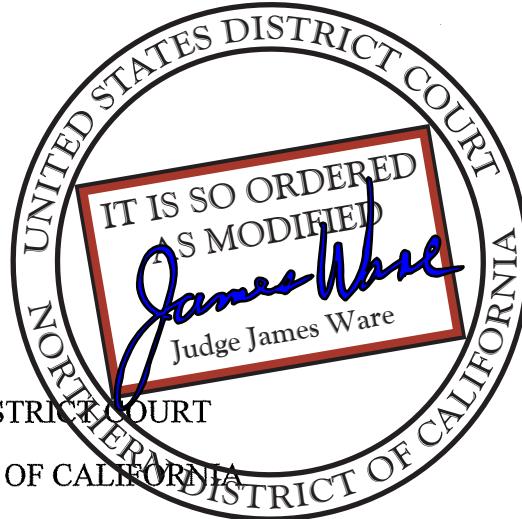


1 SEAN P. NALTY (SBN 121253)  
2 **WILSON, ELSER, MOSKOWITZ,**  
3 **EDELMAN & DICKER LLP**  
4 525 Market Street, 17<sup>th</sup> Floor  
San Francisco, California 94105  
Telephone: (415) 433-0990  
Facsimile: (415) 434-1370

5 Attorneys for Defendants  
BERKSHIRE LIFE INSURANCE COMPANY  
6 OF AMERICA and THE GUARDIAN LIFE  
INSURANCE COMPANY OF AMERICA



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE BRANCH

21 Plaintiff Joel Drexel, through his counsel of record Charles Perkins, and defendants  
22 Berkshire Life Insurance Company of America and The Guardian Life Insurance Company of  
23 America, through their counsel of record Sean P. Nalty, hereby submit to the Court the following  
24 stipulation in which the parties respectfully request that the Court modify its scheduling order in  
25 this matter for the reasons discussed below.

26       1.     Mr. Perkins recently became counsel of record for Dr. Drexel. Once Mr. Perkins  
27 reviewed the extensive claim file and discovery already performed in this matter, the parties

1 agreed that private mediation would be appropriate in this matter. Plaintiff's prior counsel did not  
 2 want to participant in private mediation. Once the parties made the decision to pursue private  
 3 mediation, counsel contacted Magistrate Judge Edward A. Infante (Ret.) to conduct the  
 4 mediation. Judge Infante's first available date, which also worked for the parties, was July 23,  
 5 2009. The parties have scheduled the mediation with Judge Infante on July 23, 2009. Judge  
 6 Infante has worked with Mr. Perkins and Mr. Nalty in the past and it is the consensus of counsel  
 7 that he gives the parties the best opportunity to resolve this matter.

8       3. Because Judge Infante gives the parties the best opportunity to resolve this matter,  
 9 the parties respectfully request that the deadline for mediation in this matter, currently set for July  
 10 6, 2009, be extended to July 24, 2009. The parties further request that this matter be removed  
 11 from the court's mediation program and referred to Judge Infante for private mediation.

12       4. Between now and the mediation, the parties will conduct the investigation and  
 13 discovery necessary to have a productive mediation. However, the parties do not wish to  
 14 complete all of the necessary discovery prior to the mediation in order to reduce attorney's fees  
 15 and costs. This will facilitate possible resolution of this matter.

16       5. Because of this, the parties respectfully request the Court move the discovery  
 17 cutoff date in this matter to give the parties more time to complete discovery in event that  
 18 mediation is unsuccessful. Currently, the discovery cutoff date is September 14, 2009. The  
 19 parties respectfully request that the Court move the discovery cutoff date in this matter to at least  
 20 October 5, 2009 and that the deadlines associated with the discovery cutoff deadline be similarly  
 21 extended. The parties believe that additional time to prosecute this matter, so that expenses can  
 22 be kept down between now and the mediation date, is the best way to handle this matter going  
 23 forward.

24 \\

25 \\

26 \\

27 \\

28

1 Therefore, based on the above, the parties hereby stipulate and request that the Court  
2 move the discovery cutoff in this matter to October 5, 2009 and that the deadlines associated with  
3 the discovery cutoff deadline be similarly extended.

4 Dated: May 22, 2009 WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

5 By: /s/ Sean P. Nalty  
6 SEAN P. NALTY  
7 Attorneys for Defendants  
8 BERKSHIRE LIFE INSURANCE COMPANY OF  
AMERICA and THE GUARDIAN LIFE INSURANCE  
COMPANY OF AMERICA

9 Dated: May 22, 2009 FLYNN, ROSE & PERKINS

10  
11  
12 By: /s/ Charles B. Perkins  
CHARLES B. PERKINS  
13 Attorneys for Plaintiff  
14 Dr. Joel Drexel

15   
PROPOSED ORDER

16 Based on the stipulation stated above, and good cause therefore, the Court hereby refers  
17 this matter to private mediation with Judge Infante and amends the scheduling order in this  
18 matter as follows:

19 Mediation Deadline: July 24, 2009. This case shall be removed from the Court's ADR program.

20 Discovery Cutoff: October 5, 2009.

21 **However, all other deadlines in the Court's April 28, 2009 Scheduling Order  
shall remain unchanged. (See Docket Item No. 24.)**

22  
23   
HON. JAMES WARE, DISTRICT  
24 COURT JUDGE  
25  
26  
27  
28